



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

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ATTORNEY GENERAL

February 2, 1955

Hon. George Parkhouse, Chairman  
Senate Committee on Labor  
Austin, Texas

Opinion No. M.S.-170

Re: Constitutionality of  
proposed Senate Bill  
No. 68, 54th Legisla-  
ture

Dear Senator Parkhouse:

By letter dated January 31, 1955, you made the following request for an opinion of this office:

"The Senate Committee on Labor respectfully requests an opinion on the constitutionality of Senate Bill No. 68, the original of which is attached."

Briefly summarized, Senate Bill No. 68 makes unlawful the following activities by employees during the course of picketing against an employer:

- (1) Preventing a railway or motor carrier from entering or departing from the employer's premises by
  - (a) forceful means (Sections 1 and 2) or by
  - (b) persuasion of the employees of a railway or motor carrier through intimidation, picketing or otherwise (Sections 3 and 4);
- (2) Refusal by the employees of a train or motor carrier to take a train or motor carrier across a picket line into or from an employer's premises in the absence of forceful prevention. (Sections 5 and 6)

A penal provision for violation is provided as well as civil action for damages and injunction. (Sections 7 and 8)

We find no constitutional or other objection to Sections 1 and 2. The power of the States to deal with violence and other unlawful practices surrounding a labor controversy, including the prohibiting of

obstructions of entrances to employers' premises was clearly recognized by the United States Supreme Court in Allen-Bradley Local No. 1111 v. Wisconsin Employment Relations Board, 315 U.S. 740, 62 S. Ct., 820 (1942) and Milk Wagon Drivers Local 753 v. Meadowmoor Dairies, Inc., 315 U.S. 287, 61 S. Ct. 552 (1940).

In Sections 4 and 5, we find one possible constitutional objection with regard to the provision that it shall be unlawful "through intimidation, picketing or otherwise, intentionally to induce or persuade or seek to induce or persuade" employees of railway or motor carriers to refuse to take such a vehicle through a picket line into or out of the premises of an employer. Peaceful picketing is a constitutional privilege under the right of free speech, Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 736 (1940), and before it may be interfered with there must be shown a clear and present danger to a clear public interest, Thomas v. Collins, 323 U.S. 516, 65 S. Ct. 315 (1945), or the violation of a valid State law, such as a Right-To-Work law, Local Union No. 10, U.A.J.P.S., A.F.L. v. Graham, 345 U.S. 192, 73 S. Ct. 585 (1953). Intimidation for the purpose of inducing employees to refuse to cross a picket line may be prohibited by State law. Ackerman v. Longshoremen and Warehouseman's Union, 187 F. 2d 860, cert. denied 342 U.S. 859, 72 S. Ct. 85 (1951). It is therefore respectfully suggested that the word "picketing" be deleted from the phrase "through intimidation, picketing or otherwise, intentionally to induce or persuade" in Sections 3 and 4. While it is quite possible that the word "picketing" as used in the context of these two sections might well be held to mean "non-peaceful picketing," and so be unobjectionable, we believe the uncertainty would be dispelled by the deletion.

With regard to sections 5 and 6 we find no question of constitutionality. N.L.R.B. v. Rockaway News Supply Co., 345 U.S. 71, 73 S. Ct. 519 (1953).

We are further of the opinion that these provisions do not conflict with the Labor Management Relations Act, commonly referred to as the Taft-Hartley Act, which enumerates certain activities that constitute unfair labor practices, with this proviso in subsection (b) (4) of Section 8:

"Provided, That nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer). If the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this subchapter;"

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A proviso in identical form is found in subsection (a) (3) of Section 8 removing closed shop agreements from the definition of an unfair labor practice. State statutes declaring closed shops unlawful have been uniformly upheld by the United States Supreme Court against attack on the ground of conflict with or pre-emption by the Taft-Hartley Act. Local Union No. 10, U.A.J.P.S., A.F.L. v. Graham, 345 U.S. 192, 73 S. Ct. 585 (1953); Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board, 336 U.S. 301, 69 S. Ct. 584 (1949).

It is our opinion that the same rule would apply with equal force to a State statute proscribing the refusal to cross a picket line as it applies to a State statute proscribing closed shops, and we conclude that sections 5 and 6 of proposed Senate Bill No. 68 are not invalidated by the Taft-Hartley Act.

Yours very truly,

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